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BY FACSIMILE AND MESSENGER

July 24, 2008

Thomaseia Duncan, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: MUR 6020
Nancy Pelosi, Nancy Pelosi for Congress, and Paul Pelosi, Treasurer

Dear Ms. Duncan:

On behalf of the Honorable Nancy Pelosi, Nancy Pelosi for Congress and Paul Pelosi, Treasurer ("Respondents"), I write to respond to the complaint in MUR 6020.

The complaint alleges that Speaker Pelosi appeared with Newt Gingrich in a nationwide ad campaign about global climate change. It alleges further that, because the ad's national audience included the Speaker's primary electorate in San Francisco, she received a contribution for the purpose of influencing her election. We respectfully request that the Commission take no further action on the complaint.

FACTUAL BACKGROUND

Nancy Pelosi is the Speaker of the United States House of Representatives. She represents California's Eighth District, which includes downtown San Francisco. On June 3, 2008, with 89.3 percent of the vote, she won the Democratic nomination to a twelfth term. See <http://june2008.sos.ca.gov>Returns/usrep/0859.htm>.

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As a national leader, Speaker Pelosi is asked from time to time to support national issues and causes. In April 2008, she agreed to appear with former Republican Speaker Newt Gingrich in a national television advertisement sponsored by the Alliance for Climate Protection. The Alliance is a section 501(c)(3) charity and is barred from intervention in partisan political elections. The ad was part of a series called "Unlikely Alliances." As with Pat Robertson and Al Sharpton, who appeared in another Alliance ad, Speaker Pelosi and Speaker Gingrich were paired because of their reputation as adversaries.

There was no understanding that the ad, which was to be distributed nationwide, would relate to the Speaker's June 3 primary. Decisions about placement were made entirely by the Alliance. Respondents understood that the Alliance would comply with all laws and regulations that might affect the content or placement of the ad.

LEGAL DISCUSSION

The Commission should take no further action on this complaint. At bottom, the Federal Election Campaign Act regulates contributions and expenditures "for the purpose of influencing any election for federal office." 2 U.S.C. §§ 431(8)(A), (9)(A). *See also Shays v. Federal Election Comm'n*, 414 F.3d 76, 99 (D.C. Cir. 2005) ("to qualify as an 'expenditure' in the first place, spending must be undertaken 'for the purpose of influencing' a federal election ...").

The facts show that the Alliance's ad had no purpose of influencing any election. It was sponsored by a charity prohibited from partisan political intervention. It was distributed nationally without targeting the Speaker's district. It placed her next to a famous Republican who was anathema to her Democratic primary voters, and who continues publicly to criticize their supposed views.¹ It was distributed before an election that she won with nearly ninety percent of the vote, as part of an ongoing, nationwide campaign.

¹ In 2006, Speaker Gingrich asked fellow Republicans: "Will everything you've worked so hard to accomplish be lost to the San Francisco values of would-be Speaker Nancy Pelosi?" Joe Garofoli, *Three Dirty Words: San Francisco Values*, S.F. Chronicle, Nov. 3, 2006, available at, <http://www.sfgate.com/cgi-bin/article.cgi?file=/c/a/2006/11/03/MNGCEM5H4N1.DTL>. Even as the Alliance ad began to air, Speaker Gingrich attacked Senator Barack Obama as "comfortable in San Francisco, treating with scorn the people of small-town America ..." *Itannity and Colmes* (Fox News television broadcast Apr. 17, 2008) (transcript available at http://www.realclearpolitics.com/articles/2008/04/newt_gingrich_on_the_latest_ca.html). Asked whether the ad was intended to advance Speaker Pelosi's election, Gingrich spokesman Rick Tyler called the idea "beyond laughable ... I want to laugh just talking to you, it's so funny. I'm certain if she had thought of that, she might have reconsidered the ad. I'm not sure in her district that a joint appearance with Newt Gingrich would work to her

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In their turn, Respondents engaged in no conduct directed toward the Speaker's re-election. They neither requested nor suggested the ad. They did not assent to its distribution in the Eighth District. To the contrary, they understood that the sponsor would comply with all relevant laws. There was no discussion of campaign plans, projects, activities or needs. Speaker Pelosi and Speaker Gingrich delivered a script conceived by the Alliance for its own purposes, as part of a larger campaign of the Alliance's devising.

Faced before with ads lacking an election-influencing purpose, where third parties made content and placement decisions, the Commission has exercised its discretion and taken no action. *See, e.g.*, MUR 5718 (Rep. Jesse Jackson, Jr.). In one advisory opinion involving similar circumstances, the Commission even *approved* the officeholder's participation. It reasoned that, because the ad was paid for with taxpayer money, the coordination rules did not apply. *See* Advisory Opinion 2004-14 (Rep. Tom Davis). These past Commission actions suggest that no further action is warranted here.

Thus, Respondents respectfully request that the Commission take no further action on the complaint.

Very truly yours,



Brian G. Syoboda
Counsel to Respondents

cc: Chairman McGahn
Vice Chair Walther
Commissioner Bauerly
Commissioner Hunter
Commissioner Petersen
Commissioner Weintraub

benefit." Fred Lucas, *Pelosi Climate Ad May Have Violated Campaign Laws, Experts Say*, CNS News (May 23, 2008), available at <http://www.crosswalk.com/news/11575934/> (included as an exhibit to the Complaint).

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